IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 812 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANT BHOGILAL MANDAPWALA

Versus

THE STATE

Appearance:

MR BK DAVE OR MR.UA TRIVEDI, for Petitioner

MR KP RAVAL, APP., for Respondent No. 1

MR NITIN M AMIN for Respondent No. 2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 30/06/2000

ORAL JUDGEMENT

A criminal complaint filed by respondent no.2 (Criminal Case No.3354 of 1983 in the Court of

Metropolitan Magistrate, Ahmedabad) for the offences under sections 408, 477-A, 34, read with 114 of the Indian Penal Code was dismissed for default and the petitioner was discharged by the learned Metropolitan Magistrate, Court No.5 by order dated 26.08.1985.

The said order was passed under section 249 of the Code of Criminal Procedure for want of prosecution and the petitioner who was accused in the said complaint was discharged. The respondent no.2 filed a fresh complaint on 12.09.1985 being Criminal Case No. 1743 of 1985. The learned Metropolitan Magistrate issued process on 06.11.1985. The petitioner who was accused in the said complaint gave an application for discharge on the ground that the second complaint was not maintainable. The application was rejected on 31.07.1989. The petitioner filed Criminal Revision Application No.196 of 1989 in the Sessions Court at Ahmedabad but the learned Additional Sessions Judge dismissed the same by judgment and order dated 19.01.1990. It is the said order passed by the learned Additional Sessions Judge confirming the order passed by the learned Magistrate which is under challenge in this Special Criminal Application under Article 227 of the Constitution.

The learned Counsel for the petitioner relied on the decision of the Supreme Court in Pramatha Nath Talukdar Vs. Saroj Ranjan Sarkar (A.I.R.1962 S.C. P.876). However, the said decision has no application to the facts of the pres

by this Court in Manmath Manidharprasad Vyas Vs. Chunilal Maganlal Patel and Another (13 G.L.R. Pg.967) dismissal of a complaint under section 259 of the old Procedure Code does not result in acquittal and such dismissal of complaint does not bar a fresh complaint. In view of this decision the second complaint filed by respondent no.2 was clearly maintainable. There is no reason to interfere with the orders passed by the learned Additional Sessions Judge confirming the order of the learned Magistrate. The petition is therefore dismissed. Rule is discharged. Interim relief stands vacated.

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m.m.bhatt